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3-013A001

January 13, 1993

18094

Ms. Mildred Lee
Recordations Unit
Interstate Commerce Commission
12th & Constitution Avenue, N.W.
Washington, D.C. 20423

JAN 13 1993 -9 50 AM

INTERSTATE COMMERCE COMMISSION

JAN 13 9 43 AM '93
MOTOR OPERATING UNIT

Dear Ms. Lee:

Enclosed is a Locomotive Operating Lease Agreement dated December 30, 1992, between the following parties:

Lessor: Electro-Motive Division,
General Motors Corporation
LaGrange, IL 60525

Lessee: Burlington Northern Railroad Co.
2800 Continental Plaza
777 Main Street
Fort Worth, Texas 76102

The equipment involved in this agreement is listed on Schedule A to the lease.

Please record this agreement as a primary document. The filing fee of \$16 is enclosed. Thank you.

Sincerely,

Mary Ann Oster

Mary Ann Oster
Research Consultant

Enclosures

Carney and Mary Ann Oster

LOCOMOTIVE OPERATING LEASE AGREEMENT

THIS LEASE, made and entered into as of this 30 th day of December, 1992, by and between Electro-Motive Division, General Motors Corporation, a Delaware corporation, hereinafter called "Lessor", and the Burlington Northern Railroad Company, a Delaware corporation, hereinafter called "Lessee".

LESSOR AND LESSEE HEREBY AGREE AND COVENANT AS FOLLOWS:

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INTERSTATE COMMERCE COMMISSION

1. Lease:

Lessee agrees to lease from Lessor the locomotives described in Schedule A hereto together with all replacement parts, additions, repairs and accessories incorporated therein and/or affixed thereto (the "Locomotives") for use by Lessee in revenue service.

Lessee will cause the Locomotives to be kept numbered with the identification numbers set forth in Schedule A and will keep and maintain, permanently and conspicuously marked on each side of each Locomotive, in letters not less than one inch in height, the words "General Motors Corporation, Electro-Motive Division Owner", with appropriate changes thereof as from time to time may be required by law, in the opinion of Lessor, in order to protect the Lessor's title to and interest in the Locomotive and the rights of the Lessor under this Lease. Lessee will not place any Locomotive in operation or exercise any control or dominion over the same unless such words are so marked and will replace promptly any such markings which may be removed, obliterated, defaced or destroyed. Lessee will not change the identification number of any Locomotive unless and until a statement of the new number therefor is delivered to Lessor and filed in all public offices where this Lease may be filed.

Lessee will not allow the name of any person, association or corporation to be placed on any Locomotive as a designation that might be interpreted as a claim of ownership.

2. Rent/Term:

- (a) Lessor shall deliver the Locomotives in good operating condition, and in compliance with all applicable rules and regulations as set forth by the Federal Railroad Administration (FRA). Rent with respect to each Locomotive shall commence when it is delivered to an interchange point on Lessee's lines designated by Lessor, and shall continue for the period stated in Schedule B hereto. The Daily Rental shall be determined in accordance with Schedule B hereto.
- (b) Delinquent installments of rent shall bear interest at the rate of 1-1/2% per month if not prohibited by law, otherwise at the highest lawful contract rate.
- (c) Lessee agrees to store all or any portion of the Locomotives in accordance with Lessor's Maintenance Instruction M.I. 1726B, including but not limited to covering the exhaust stack, completely draining the water from the locomotive systems, and protecting the batteries from freezing, for a ninety (90) day period after termination of this Lease, at Lessor's request, free of any charge to Lessor.
- (d) Lessee shall not be entitled to any reduction of rent nor any setoff, counterclaim, recoupment or defense against rent or any other amount payable hereunder for any reason whatsoever, including, but not limited to, reductions, setoffs, counterclaims, recoupments or defenses due

or alleged to be due by reason of any past, present or future claims of Lessee against Lessor or any other person for any reason whatsoever, nor shall this Lease terminate nor the obligations of Lessee be otherwise affected by reason of any defect in the condition, design, operation or fitness for use of any Locomotive or damage to or loss of possession or use or destruction thereof from whatever cause and of whatever duration except as otherwise provided herein.

3. Warranties and Representations:

Lessee acknowledges that Lessor has no knowledge or information as to the condition or suitability of the Locomotives for Lessee's purposes and Lessor's decision to enter into this Lease is made in reliance on Lessee's undertakings herein. LESSOR MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND RESPECTING THE LOCOMOTIVES, WHETHER STATUTORY, WRITTEN, ORAL OR IMPLIED, AND LESSOR HAS NOT MADE AND SHALL NOT BE DEEMED BY VIRTUE OF HAVING EXECUTED THIS LEASE TO HAVE MADE ANY REPRESENTATION OR WARRANTY AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESIGN OR CONDITION OF THE LOCOMOTIVES, ALL OF WHICH ARE EXPRESSLY DISCLAIMED AND LESSOR SHALL NOT BE LIABLE, IN CONTRACT, OR TORT BECAUSE OF ANY DEFECT WHETHER HIDDEN, LATENT, OR OTHERWISE DISCOVERABLE OR NONDISCOVERABLE RESPECTING ANY LOCOMOTIVE. Lessee accordingly agrees not to assert any claim whatsoever against Lessor based thereon. Lessee further agrees, regardless of cause, not to assert any claim whatsoever against Lessor for loss of anticipatory profits or consequential damages.

4. Payment of Rent:

Lessee shall transfer funds in payment of the monthly rent to the following account (or third party if instructed to do so by Lessor) within thirty (30) days of receipt of an invoice therefor:

Electro-Motive Division of General Motors Corporation
c/o 1st National Bank of Chicago
Account No. 50-63191 "Rental Income Account"
Attn: Assistant Comptroller

5. Recordkeeping; Inspection:

Lessee agrees to keep and maintain and make available to Lessor for the duration of the lease term and any renewal terms, and for not less than six (6) months following the expiration of this Lease any and all records of Lessee's use, operation, inspection, repairs and maintenance of the Locomotives while subject to this lease as shall be normally maintained by Lessee and as such may be reasonably requested by Lessor. Lessee further agrees to send Lessor one copy monthly of Locomotive maintenance and repair records covering the Locomotives subject to this lease. Lessor's agents shall have the right at all reasonable times to go upon the property of Lessee to inspect the Locomotives.

6. Casualty/Condemnation:

- (a) Lessee shall notify Lessor in the event any Locomotive shall be lost, stolen, destroyed, irreparably damaged, permanently rendered unfit for use from any cause whatsoever, other than acts or omissions of Lessor (any such occurrence being hereinafter called a "Casualty

Occurrence"). On the payment date next following the date of any Casualty Occurrence, Lessee shall (i) pay to Lessor any unpaid rent due on or prior to such date, and (ii) either pay Lessor the Casualty Value of the Locomotive as stated in **Schedule A** hereto or by mutual agreement, replace such Locomotive with another of like model, and condition with the same accessories free and clear of all liens and encumbrances.

- (b) Upon payment of any Casualty Value or delivery of any substitute Locomotive, the terms of this Lease shall no longer apply to the Locomotive which was the subject of such payment or substitution and title to and rights in such Locomotive shall thereupon vest in the Lessee; provided, however, the Lessor shall have the option, to be exercised within fifteen (15) days after any such payment or substitution by Lessee, to retain the subject Locomotive upon payment to Lessee of the scrap or salvage value thereof, to be determined by mutual agreement or, failing such agreement, by the average of the bids thereon by three independent parties. Lessee shall furnish Lessor with certificates or other evidence of compliance with this Section 6 as may be reasonably required.
- (c) In the event that a Locomotive is taken or requisitioned by condemnation or otherwise by any governmental entity for a period which shall exceed the remaining term hereof, Lessor shall relieve Lessee from rental payments for such Locomotive effective with the date it was first requisitioned or condemned and settle with such governmental entity upon appropriate consideration for such taking. Lessee shall immediately pay over to Lessor any proceeds which it may receive in consideration of any such taking.

7. Indemnity:

Lessee agrees to indemnify, protect and hold harmless Lessor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, and reasonable expenses in connection therewith, including, but not limited to, reasonable counsel fees arising from: (a) Lessee's failure to promptly perform any of its obligations under Sections 2, 6, 8 or 16 hereof, or (b) injury to persons or property resulting from or based upon the actual or alleged use, or transportation of any Locomotive hereunder, or (c) any repair, servicing or adjustment of any Locomotive or any delay in providing or failure to provide any thereof, or (d) any interruption of service or loss of business of Lessee. Lessee shall also, at its own cost and expense, defend any and all suits which may be brought against Lessor upon any such liability or claim and shall satisfy, pay and discharge any and all judgments and fines that may be recovered against Lessor in any such action provided Lessor gives Lessee written notice of any such claim or demand. Lessee shall not be required to indemnify Lessor for any loss, liability or expense resulting from the breach of any repair obligation of Lessor hereunder or gross negligence or willful misconduct of Lessor or from claims for strict liability in tort. The indemnities arising under this section shall continue in full force and effect notwithstanding the full payment of all other obligations hereunder or the expiration or termination hereof.

8. Compliance with Law - Repair and Maintenance:

Lessee shall comply with all applicable FRA requirements, the interchange rules of the Association of American Railroads and all other applicable governmental laws, regulations and requirements with respect to the use, maintenance and operation of the Locomotives during this Lease. Lessee shall use the Locomotives only in the manner for which they are designed and intended, so as to subject them only to ordinary wear and tear. Nothing contained herein shall be construed as requiring the

12.. Notices:

Unless otherwise specifically provided, any notices to be given under this Lease or any other communications between the parties shall be given by certified mail, postage prepaid in the following manner:

(a) Notices from Lessor to Lessee shall be sent to:

**Burlington Northern Railroad Company
2800 Continental Plaza
777 Main Street
Forth Worth, Texas 76102
Attention: System Chief Mechanical Officer**

or other address that Lessee may indicate by written notice to Lessor.

(b) Notices from Lessee to Lessor shall be sent to:

**Electro-Motive Division
General Motors Corporation
9301 W. 55th Street
La Grange, Illinois 60525
Attention: Manager of Lease Locomotive Operations, Dept. 785**

13. Quiet Enjoyment:

So long as Lessee complies with the terms and provisions hereof, Lessee shall be entitled to the use and possession of the Locomotives according to the terms hereof without interference by the Lessor or by any party lawfully claiming by or through the Lessor.

14. Protection of Lessor's Title:

Lessor may, at its option, require Lessee to file this Lease with the Interstate Commerce Commission and elsewhere to protect Lessor's title to the Locomotives. Lessee will, from time to time, execute, acknowledge and deliver to Lessor any and all further instruments reasonably requested by Lessor, for the purpose of protecting Lessor's title to the Locomotives.

15. Taxes:

Lessee or Lessor at Lessee expense, shall report, pay and discharge when due all license and registration fees, assessments, use and property taxes, gross receipts taxes arising out of this Lease, including without limitation amounts payable under Sections 2, 6, 7, 14 or 18 hereof, and other taxes (excluding any tax measured by Lessor's net income), together with any penalties or interest thereon, imposed by any governmental authority upon the Locomotives, whether or not the same shall be assessed against or in the name of Lessor or Lessee.

16. Performance Obligations of Lessee by Lessor:

In the event that Lessee shall fail duly and promptly to perform any of its obligations hereunder, the

Lessor may, at its option, perform same for the account of Lessee without thereby waiving such default. Any amount paid or expense (including reasonable attorneys' fees), incurred by the Lessor in such performance, together with interest at the lesser of 1-1/2% per month or the highest amount allowed by law thereon until paid, shall be payable by the Lessee upon demand as additional rent hereunder.

17. Lessee's Covenants:

Lessee will, during the term of this Lease: (a) defend at Lessee's own cost any action, proceeding or claim affecting the Locomotives; (b) not misuse, fail to maintain, secrete, sell, rent, lend, encumber or transfer the Locomotives, except as provided in Section 10 hereof; and (c) permit Lessor to enter upon Lessee's premises or wherever the Locomotives may be located at any reasonable time and upon reasonable notice to inspect the Locomotives. The provisions of this Section shall survive the termination of this Lease.

18. Default:

(a) An event of default shall occur if Lessee:

- (i) fails to pay when due any installment of rent and such failure continues uncured for ten (10) days after written notice thereof to Lessee by Lessor;
- (ii) fails in any of its obligations hereunder and such failure continues uncured for fifteen (15) days after written notice thereof to Lessee by Lessor;
- (iii) ceases doing business as a going concern;
- (iv) files a voluntary petition in bankruptcy or files a petition seeking reorganization, composition, readjustment, liquidation, dissolution or similar arrangement or files an answer admitting the material allegations of a petition filed against it for such purpose.
- (v) consents to or acquiesces in the appointment of a trustee, receiver, or liquidator of it or of any substantial part of its assets;
- (vi) fails to have any proceeding seeking reorganization, arrangement, readjustment, liquidation, dissolution or the appointment of any trustee, receiver or liquidator of any part of its assets dismissed or vacated within sixty (60) days; or
- (vii) attempts to remove, sell, transfer, encumber, part with possession or sublet any Locomotive or any part thereof in a manner prohibited hereunder.

(b) Upon the occurrence of an event of default, Lessor, at its option, may:

- (i) declare all sums due and to become due hereunder immediately due and payable;
- (ii) proceed by appropriate court action to enforce performance by the Lessee of any and all covenants hereof and to recover damages for the breach thereof;
- (iii) demand that Lessee deliver the Locomotives forthwith to Lessor at Lessee's expense at

such place as Lessor may designate; or

- (iv) without notice or legal process, enter into any premises of or under control of Lessee or any agent of Lessee where any Locomotive may be and retake all or any item thereof, in accordance with applicable law, Lessee hereby expressly waiving all further rights to possession of the Locomotives and all claims for damages related to any such retaking.
- (c) If any statute governing any proceeding hereunder specifies the amount of Lessor's deficiency or other damages for breach of this Lease by the Lessee, Lessor shall be entitled an amount equal to that allowed under such statute.
- (d) Lessor's remedies hereunder shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. Lessee hereby waives: (i) any requirements of law which might limit or modify the remedies herein provided, and (ii) any claim to any right of offset against the rental payments due hereunder. Lessor shall, moreover, be entitled to all rights provided for in any bankruptcy act, including the right to take possession of any Locomotive upon any event of default hereunder, regardless of whether Lessee is in reorganization.
- (e) No failure or delay by Lessor in exercising, any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege by Lessor preclude any other or further exercise thereof, or the exercise of any other right, power or privilege.

19. Choice of Law:

This Lease shall be governed in all respects by the Law of the State of Illinois and shall be deemed to be entered into in the State of Illinois.

20. Miscellaneous:

- (a) All transportation charges associated with delivering and returning the Locomotives to an interchange point on the Lessee's rail lines, as designated by Lessor, shall be borne by Lessee.
- (b) If any part hereof is contrary to, prohibited by or deemed invalid under applicable laws or regulations of any jurisdiction, such provision shall be inapplicable and deemed omitted but shall not invalidate the remaining provisions hereof.
- (c) This Lease is irrevocable for the full term hereof.
- (d) This Lease and Schedules A, B, and C hereto constitute the entire agreement between the parties concerning the Lease of the Locomotives and no modification hereof shall be effective unless reduced to writing and signed by authorized representatives of the parties.

IN WITNESS WHEREOF the parties hereto intending to be legally bound thereby have executed this Agreement as of the date first above written.

General Motors Corporation
Electro-Motive Division

Attest: [Signature]

By: [Signature]

Title: ASSISTANT SECRETARY

Burlington Northern Railroad

Attest: _____

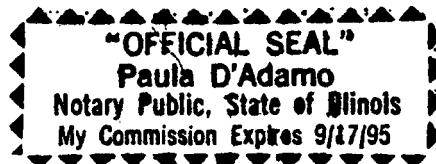
By: [Signature]

Title: DIRECTOR LOCOMOTIVE MGMT.

State of Illinois)
County of Cook)

On this 30th day of December, 1992, before me personally appeared KATH McCALESS, to me personally known, who, being by me duly sworn, did say that he is a representative of Electro-Motive Division, General Motors Corporation, that the instrument was signed on behalf of such corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.

My commission expires: _____



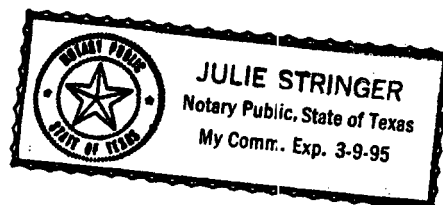
[Signature]
Notary Public

State of Texas)
County of Tarrant)

On this 30th day of December, 1992, before me personally appeared David C. Wolter, to me personally known, who, being by me duly sworn, did say that he is a representative of the Burlington Northern, that the instrument was signed on behalf of such corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.

My commission expires: _____

[Signature]
Notary Public



SCHEDULE A

LEASED LOCOMOTIVES

Casualty Values

<u>Road Number</u>	<u>Model</u>	<u>Casualty Value</u>
8300	SD60	\$850,000
8301	SD60	\$850,000
8302	SD60	\$850,000

SCHEDULE B

LEASE TERM, DAILY RENTAL RATE, AND OPTIONS

Lease Term

The lease term with respect to each Locomotive delivered pursuant to this Lease shall commence on the January 1, 1993 and end December 31, 1994.

Rent

The daily rent for each Locomotive shall be as follows:

<u>Model</u>	<u>Daily Rent</u>
SD60	\$290.00

SCHEDULE C

Maintenance responsibilities for the Locomotives are as follows:

Lessee shall:

1. Comply with all safety and environmental regulations, directives and instructions of the FRA and all governmental authorities regardless upon whom such requirements are, by their terms, nominally imposed, and keep the Locomotives in such compliance.
2. Be responsible for all material and labor required to perform:
 - (a) Scheduled and preventative maintenance in accordance with EMD Maintenance Instructions including but not limited to M.I. 1777, and its supporting documentation.
 - (b) Failure repairs (other than those which are Lessor's responsibility as specified below).
 - (c) Wheel truing and replacement.
 - (d) Replace lost or stolen parts.
3. Use its best efforts to purchase replacement materials from BN/EMD approved source.
4. Use fuel, lubricants, and coolant satisfying EMD Maintenance Instructions 1748, 1750, 1752, 1756, and 1764, and Lessee's maintenance schedules.

Lessor at its sole expense shall:

During the initial 12 months of this Lease, the Lessor will repair any major component failure which is not caused by improper use, modification or lack of preventative maintenance by Lessee. A major component failure is one involving the replacement or removal of:

- (1) The following engine components:
 - (i) Crankshaft
 - (ii) Turbocharger
 - (iii) More than four (4) Power Assemblies at one shopping
 - (iv) Engine gear trains
- (2) A Main Generator/Alternator
- (3) The following Traction Motor Components:
 - (i) Armature, Interpole, and/or main field coil grounds
 - (ii) Armature Bearing Failures
 - (iii) "Bird Nested" Armature
- (4) Any fire damage to control or hi-voltage wiring, requiring 40 man hours or more to repair.
- (5) A catastrophic failure of a Dynamic Braking System, i.e., a failure of all resistor grids and fans.
- (6) A catastrophic failure of the Air Compressor.

Note:

In the event that the parties shall agree, the Lessee will perform any repair obligation of Lessor hereunder. In such event, Lessor shall provide all necessary parts to Lessee, free of charge and pay Lessee for all necessary labor at a rate of Fifty Dollars (\$50) per man hour.